

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

BERNARDO GARCIA,

Defendant.

ORDER

05-cr-155-bbc
12-cv-566-bbc

On September 24, 2012 I denied defendant Bernardo Garcia's motion for post conviction relief under 28 U.S.C. § 2255 for his failure to show that either his conviction or sentence is illegal. Defendant filed a motion for reconsideration which was denied on October 8, 2012.

Now defendant has filed a notice of appeal as well as an affidavit in support of a motion to proceed in forma pauperis on appeal pursuant to 28 U.S.C. § 1915.

According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization "unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed."

Defendant had appointed counsel during the criminal proceedings against him and I do not intend to certify that the appeal is not taken in good faith. Defendant's challenge to his sentence is not wholly frivolous. A reasonable person could suppose that it has some merit. Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000).

ORDER

IT IS ORDERED that defendant Bernardo Garcia's request for leave to proceed in forma pauperis on appeal is GRANTED.

Entered this 1st day of November, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge